
(2016) 07 BOM CK 0078

In the Bombay High Court

Case No : Public Interest Litigation No. 43 of 2016

Mr. Imran Suleman Qureshi

APPELLANT

Vs

Mumbai Building Repair & Reconstruction Board

RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 AIRBomR 577

Hon'ble Judges : V.M. Kanade and M.S. Sonak, JJ.

Bench : Division Bench

Advocate : Mr. Manoj Harit i/b. Manoj Harit & Co, Advocate, for the Petitioner; Mr. V.P. Sawant, Advocate, for the Respondent Nos. 1 and 2; Mr. G.W. Mattos, AGP, for the State-Respondent Nos. 3 to 5; Ms. Trupti Puranik, MCGM, for the Respondent; Mr. Rafique Dada, Se

Final Decision : Dismissed

Judgement

M.S. Sonak, J.—Rule. With the consent and at the request of the learned counsel for the respondents, Rule is made returnable forthwith.

2. The petitioner, who claims to have instituted the present petition in "public interest", seeks the following substantive reliefs in this petition :

"a) this Hon"ble court may be pleased to issue an appropriate Writ order or direction in the nature of Writ, calling for record and proceeding relating to the amendment to Clause 2 and 4 of DCR 33(7) Appendix III, dated 21/05/2011 and after judicially examining the reasonableness, propriety, rationale and the apparent conflict with the Constitutional provisions thereof ; the impugned amendment dated 21/05/2011, only with respect to the amendment to Clause 2 and 4 of DCR 33 (7) Appendix III, may please be quashed and set aside ;

b) this Hon"ble Court may be pleased to direct the Respondent No. 1 & 2 to provide information about all the cases, in island city, in which transfer of "Surplus area" has been permitted under the amended Clause 4 of DCR 33(7)

Appendix III, including the transfer of "Surplus Area" by the Respondent No. 7 & 8 AND upon such disclosure ; this Hon'ble Court may be pleased to judicially examine the same for violation of Article 14 & 15 of the Constitution and quash and set aside the approval dated 17/10/2014 granted by the Respondent No. 1 in favour of the Respondent No. 7 & 8 ;

c) this Hon'ble Court may be pleased to direct the Respondent No. 4 and the Respondent No. 5 to examine the issue of evasion of stamp duty by the developers like the Respondent No. 7 & 8 ; in the island city of Mumbai, under the guise of "surrender of surplus area" to MHADA (Tri Party agreement dated 22/01/2016 Ex ? to the petition), and if there is evasion of stamp duty, appropriate action in accordance with law may please be directed to be initiated ;

d) this Hon'ble Court may be pleased to issue an appropriate Writ, directions or directions in the nature of Writ to the Respondent Authorities, or any other empowered Agency/Authority, to carry out necessary investigation into the issue of generation of black money generated through the "Tri-Party Agreement" dated 22/01/2016 and all other "tri-Party Agreements" of similar nature executed by the Respondent No. 1 with various developers in the island city of Mumbai."

3. Mr. Manoj Harit, the learned counsel for the petitioner submitted that the petitioner has no personal interest in the subject matter of the present petition, which has been instituted by the petitioner in "public interest". He submitted that the petitioner is a resident of Sukhlaji Street, Mumbai Central (East), where, the respondent nos. 7 and 8 are developing the huge construction project taking undue advantage of the amendments to clauses 2 and 4 of Development Control Regulations 33(7) Appendix III, dated 21 May, 2011. Mr. Harit submitted that the amendments to DCR 33(7) are unconstitutional and therefore, the petitioner is a proper relator, in public interest, to challenge the same. Mr. Harit submitted that in the past, the petitioner had instituted PIL No. 65 of 2013 concerning illegal usurpation/grabbing of plot of land belonging to Nair Hospital, in which petition, interim relief has also been granted. This according to Mr. Harit, establishes the bona fides of the petitioner in instituting the present petition.

4. Mr. Harit submitted that on account of unconstitutional amendments to clauses 2 and 4 of DCR 33(7) Appendix III dated 21 May, 2011, the builders and developers like the respondent nos. 7 and 8 are abusing the benefit of enhanced FSI, to the detriment of Maharashtra Housing and Area Development Authority (MHADA) and therefore, there is public interest involved in declaring the said amendments as ultra vires the provisions of the Constitution of India. Mr. Harit further submitted that the respondent nos. 7 and 8 i.e. builders and developers undertaking the project, are evading payment of stamp duty and there is public interest involved in restraining them from doing so. Mr. Harit also submitted that black money is being generated through "Tripartite Agreement" dated 22 January, 2016 entered into by the respondent nos. 7 and 8 on one hand and the MHADA on the other and that this requires "investigation". For all these reasons, Mr. Harit submitted that the present petition is required to be entertained as a

"public interest litigation" and there are no mala fides involved in the institution of the present petition.

5. The learned counsel for the respondents, almost in unison, submitted that the present petition has not been instituted "pro bono publico", but rather, the very institution and the prosecution of the present petition constitutes a gross abuse of the process of public interest litigations. They pointed out that the petitioner, through his relations and associates has been targeting the present project as also some other projects of the respondent nos. 7 and 8, solely with a view to extort monies from the respondent nos. 7 and 8. In this regard, the learned counsel appearing for the respondent nos. 7 and 8 adverted to the various averments made by Humayun Shaikh, the Director of respondent No. 8 in the affidavit in reply filed in the present petition.

6. The learned counsel for the respondents submitted that the constitutional validity of DCR 33(7) has already been upheld by the Supreme Court in the case of Jayant Achyut Sathe v. Joseph Bain D'souza (2008) 13 SCC 547 and by this Court in the case of M/s. J. Gala Builders & Anr. v. Mumbai Building Repairs and Reconstruction Board & Ors. (and other connected matters) decided on 7 May, 2015 O.S. Writ Petition No. 2359 of 2011 and other connected matters., and therefore, there was no case made out by the petitioner to once again raise the very same challenge and that too, by means of a purported public interest litigation. The learned counsel for the respondents submitted that ordinarily no public interest litigation may be entertained to question the vires of a statute or a statutory provision. Further, the learned counsel for the respondents, including in particular, Mr. V.P. Sawant, the learned counsel for respondent nos. 1 and 2 submitted that there was no constitutional infirmity in the impugned provisions, since, such provisions were very much in public interest. The learned counsel for the respondents pointed out that the impugned provisions relate to the year 2011 and on the basis of the same, several parties have taken benefits or suffered liabilities. However, the petitioner, on account of oblique motives and with utmost bad faith, seeks only to target the respondent nos. 7 and 8 because the said respondents have resisted the extortionary demands of the petitioner. For all these reasons, the learned counsel for the respondents urged for dismissal of the present petition with exemplary costs.

7. The rival contentions now fall for our determination.

8. Upon due consideration of the submissions made by the learned counsel for the parties and upon perusal of the record, we are satisfied that the petitioner cannot be said to have instituted the present petition "in public interest". Rather, the institution and prosecution of the present petition, though masquerading as "public interest litigation" constitutes abuse of the process of the public interest litigations. In the name of public interest, the petitioner, whose credentials are in serious doubt, has attempted to abuse the judicial process, in order to promote his personal interest. The petition instituted by this petitioner can be aptly described as "personal interest litigation" or "paisa interest litigation", but not a

"public interest litigation". Since, such petitions, masquerading as public interest litigations are on the rise and the adjudication of such petitions makes disproportionate demands upon valuable judicial time, we propose to make reference to the decisions of the Supreme Court on the subject, in the fond hope that the institution and prosecution of such petitions is checked at least to some extent in future cases.

9. The petitioner in paragraph 1 of the petition has purported to disclose details about himself, since, the petitioner claims to espouse public interest. The petitioner has stated that he is in the business of scrap paper trading and resides at Sukhlaji Street, Mumbai Central (East). The petitioner has also stated that he was a partner in a family owned partnership firm, namely, M/s. Sirsiwala Realty, from which "he intends to retire due to his personal difficulties". Thereafter, the petitioner has made a reference to PIL 65 of 2013 instituted by him in relation to illegal usurpation/grabbing of plot of land belonging to Nair Hospital. The petitioner has stated that PIL has been admitted by order dated 24 March, 2015 and further, even certain interim orders have been made therein. The petitioner has conceded that the issue of the petitioner's "locus" has been left open, since, the respondents in the said petition, had alleged that the petitioner is a "rival builder". The petitioner has also stated that he has instituted a writ petition No. 1634 of 2013 with respect to certain illegalities and violations committed by a builder in a construction project at Sukhlaji Street, where the petitioner resides. The petitioner has also stated that the petitioner had instituted proceedings before the National Green Tribunal (NGT) with regard to the construction project, which proceedings were dismissed by the NGT "on technical grounds". The petitioner has stated that he was however granted liberty by the NGT to agitate his grievance before this Court and in pursuance of the same, the petitioner again "intends to carry out suitable amendments" to writ petition No. 1634 of 2013. The petitioner concedes that the construction project which is subject matter of writ petition No. 1634 of 2013 has been undertaken by the respondent No. 8 in the present petition. The petitioner has thereafter stated that whilst he was collecting information with regard to the pending petition "he stumbled upon some very disturbing fact". Such disturbing facts according to the petitioner involved the tweaking of DCR for benefit of private builders, discrimination on religious grounds and evasion of stamp duty leading to generation of black money. For all these reasons, the petitioner has stated that "there isn't an iota of "personal" interest, profit or dispute, in filing the present petition".

10. On behalf of the respondent No. 8, Humayun Shaikh, the Director has filed affidavit in reply. Therein, several objections have been raised to the maintainability of the petition, including the objection that there is absolutely no public interest involved in the institution of the present petition. At paragraph 3 of the affidavit, the deponent has stated that the petition filed is motivated, mala fide and not in public interest. The deponent has stated that this petition is for furthering the personal interests of the petitioner as well as his brothers who are inhabitants of Sukhlaji Street and whose business is to extort moneys from

developers in the vicinity by lodging false and frivolous complaints in respect of the developments carried out in their area. The deponent has stated that the petitioner and his brothers, having failed to extort moneys from the respondents for various projects undertaken by them under the threat of lodging false and frivolous complaints, have repeatedly initiated mala fide proceedings against the respondents and their associates in respect of the developments undertaken by the respondents and their associates with a view to obstruct the same and to cause loss and injury. A list setting out the various proceedings initiated by the petitioner and his associates against the respondent No. 8 and its associated companies has been annexed to the affidavit in reply. The list, is relevant and is therefore transcribed below :

Sr.

Last Date

Property

Advocate

Suit No.

Parties

Court

Petr. Adv.

Remark

1

28.09.15

Agripada Office

Mulla Associate

PIL/65/2013

Imran Suleman Qureshi

High Court

Arjun Section Kode/Manoj Harit

2

16.02.16

Shuklaji Street

M. Mulla Associates

WP 1634/2013

Imran Suleman Qureshi
High Court
Arjun Section Kode/Manoj Harit
3

26.11.15
Shuklaji Street
Asim Sarode

APP 124/2015
Imran Suleman Qureshi
PUNE NGT

Manoj Harit
Disposed off.

4
28.07.15
Shuklaji Street
M. Mulla Associates
PIL 9/2013

Anita Anil Chavan
High Court
Shama Mulla/Manoj Harit
Disposed off.

5
11.03.13
Shuklaji Street
M. Mulla Associates
4781-4782/2013

Rajesh Maruti Kamble
Supreme Court Disposed off.

6
09.05.12

Shuklaji Street

M. Mulla Associates

PIL/27/2012

Rajesh Maruti Kamble

High Court

Ramesh Dubey

Disposed off.

7

21.08.12

Shuklaji Street

M. Mulla Associates

RP/39/2012

Rajesh Maruti Kamble

High Court

Ajay Misar/Manoj

Disposed off.

11. The affidavit filed by and on behalf of the respondent No. 8 also makes reference to the petitioner being a builder developer himself and certain instances wherein, criminal proceedings have been initiated against the petitioner and his brothers for the offences involving extortion, land grabbing, forgery, cheating etc. There is reference to a particular case involving forgeries to electoral rolls, evasion of stamp duty, for which the FIR has been registered against the petitioner and his six brothers under sections 465, 467, 468, 471, 420 r/w. 34 of IPC on basis of complaint of one Shri Shafiq Ahmed a tenant of the property whose rent receipt is allowed to have been forged for the purposes of evasion of stamp duty. The respondent No. 8 has annexed a list of criminal proceedings instituted/pending against the petitioner and his brothers at various police stations. Since, this list is relevant, the same is transcribed below :

Sr.

Complainant Name

Accused Name

FIR Date

FIR No.

Police Station

Section

1

Mr. Mohd. Hanif Husain Mogal

Aslam Suleman Qureshi

06/04/08

CR No. 112 of 2008

Nagpada Police Station

420

2

Mr. Gayasuddin Kifayatullah Zariwalla

1. Sultan Suleman Qureshi. 2. Rizwan Sulemn Qureshi 3. Imran Suleman Qureshi

04/04/14

CR No. 4 of 14

MRA Marg Police Station

415, 420, 465, 466, 467, 468, 471, 506 (II) R/W. 34, 109, 120(b).

3

Mr. Gayasuddin Kifayatullah Zariwalla

1. Sultan Suleman Qureshi. 2. Imran Suleman Qureshi 3. Rizwan Suleman Qureshi 4. Aslam Suleman Qureshi

06/06/14

CR No. 163 of 2014

Byculla Police Station

324, 323, 385, 506 (II) of IPC, 37(1), 135

4

Mr. Eknath Naval Savant

Gufran Suleman Qureshi

06/10/15

CR No. 395 of 2015

Nagpada Police Station

337, 338

5

Shafique Zahid Ahmed

1. Sirsiwala Reality 2. Sultan Suleman Qureshi 3. Irfan Suleman Qureshi 4. Ikram Suleman Qureshi 5. Rizwan Suleman Qureshi 6. Aslam Suleman Qureshi 7. Imran Suleman Qureshi 8. Gufran Suleman Qureshi

28/04/16

CR No. 145 of 2016

Nagpada Police Station

465, 467, 468, 471, 420 R/W. 34

Sr.

Complainant Name

Accused Name Police Chowki

N.C. Date

N.C. No.

Section

1

Mr. Gaysuddin Kifayatullah Zariwala

Aslam Suleman Qureshi

MRA Marg

12/04/14

302 of 2014

504, 506

2

Mr. Gaysuddin Kifayatullah Zariwala

1. Aslam Qureshi 2. Imran Qureshi

Nagpada

14/04/2014

682 of 2014

504, 323

3

Mr. Gayasuddin Kifayatullah Zariwala

1. Aslam Suleman Qureshi 2. Sultan Suleman Qureshi 3. Imran Suleman Qureshi

Kurla

17/04/2014

586 of 2014

504, 506

4

Mr. Gayasuddin Kifayatullah Zariwala

1. Aslam Sulemn Qureshi Marg

2. Imran Suleman Qureshi

Sir J.J.

18/04/2014

523 of 2014

504, 506

5

Mr. Riyasuddin Kifayatullah Zariwala

Imran Suleman Qureshi

Nagpada

09/03/16

561 of 2016

323, 504, 506

6

Iqbal Kamruddin Qureshi

Imran Suleman Qureshi

Nagpada

31/01/2016

233 of 2016

504, 506

7

Mr. Shafique Ahmed Zahoor Ahmed

Imran Suleman Qureshi

Nagpada

21/04/2016

943 of 2016

504, 506

12. In the affidavit filed by the respondent No. 8, there is reference to PIL No. 9 of 2013, which is stated to have been instituted by an associate of the petitioner, Anita Anil Chavan. This Court, by its order dated 6 July, 2015 had directed the said Anita Anil Chavan to deposit a sum of Rs. 10 lakhs, in order to show her bona fides and by way of security for costs. On the returnable date, i.e. on 20 July, 2015 neither the said petitioner nor her Advocate remained present and the purported PIL No. 9 of 2013 came to be dismissed.

13. The petitioner has not chosen to rejoin to the affidavit in reply filed by the respondent No. 8. Even if we are to proceed on the basis of denials, its quite evident that the petitioner, who claims to espouse public interest, has a history of targeting only the respondent No. 8 and its associated companies taking up projects in and around the area where the petitioner and his brothers reside. From the record of proceedings initiated by the petitioner, his brothers and his associates against the projects undertaken by the respondent No. 8 and nature of criminal proceedings pending against the petitioner and his brothers, the possibility that the present petition has been instituted only for the purposes of extortion of moneys or for the purposes of blackmail as alleged by the respondent No. 8, cannot be entirely ruled out.

14. The petitioner does not inspire confidence that he is some genuine public interest litigant interested in espousing the cause of the public or some genuine whistle blower, interested, in exposing some nexus between the builders and the authorities, to the detriment of public interest. The petitioner has made only selective disclosures in the petition, with regard to the proceedings instituted by him. The petitioner has made no reference to proceedings instituted by his brothers or associates. The learned counsel for the respondent nos. 7 and 8 submitted that one and the same lawyer has been appearing in the several proceedings initiated against the project of the respondent no. 8 at the behest of the petitioner and his associates. Whilst there may be prima facie substance in the allegation that the present petition has not been instituted in good faith, the circumstance that the same lawyer has appeared in the several proceedings referred to in the list, without anything else, may not be a relevant consideration for ascribing bad faith or mala fides to the petitioner. We therefore, refuse to take such circumstance into consideration. There are however several other circumstances as aforesaid which establish that there is really no public interest involved in the institution of the present petition and in any case, the petitioner

is not at all some genuine or bona fide relator in respect of the matter which he purports to raise by institution of the present petition. In fact, the material on record, at least prima facie indicates that the petitioner is bent upon abusing the process of public interest litigations, with a view to target the respondent nos. 7 and 8, possibly with a view to practise extortion. We therefore, do not regard it as appropriate or safe to entertain the present petition as a public interest litigation on behalf of the petitioner.

15. In the only previous PIL No. 65 of 2013 instituted by the petitioner, the issue of "locus" has been kept open. Therefore, the circumstance that PIL No. 65 of 2013 has been entertained and some interim reliefs granted, is by itself, not sufficient to establish the credentials of the petitioner. Besides, in matters of such nature the issue raised by a petitioner is also equally important. There may be a situation where the petitioner, for various reasons, may not be a proper relator but the issue raised by him may involve considerable public interest. In such a situation, this Court, is not powerless but may proceed to determine the issue, if necessary, by appointing an amicus curiae or by treating the writ petition as a suo motu petition. Unfortunately, in the present case, even the issue raised by the petitioner is not backed by any serious legal research or data. Accordingly, we are satisfied that this is not a fit case to proceed any further with the determination of the issues in the present petition.

16. In the present petition, the petitioner has challenged the vires, or the constitutional validity of amendments to clauses 2 and 4 of DCR 33(7) Appendix III dated 21 May, 2011. Apart from the circumstance that the petitioner has raised no appropriate grounds in support of such challenge, we refer to the case of Guruvayoor Devaswom Managing Committee v. C.K. Rajan (2003) 7 SCC 546, in which the Supreme Court has summarised the principles evolved in the matter of amendment of public interest litigations in paragraph 50. In sub paragraph xi one of the principle stated, reads thus :

"(xi) Ordinarily, the High Court should not entertain a writ petition by way of public interest litigation questioning the constitutional or validity of a statute or a statutory rule."

17. Therefore, applying the principle as aforesaid, we see no reason to entertain the present petition, instituted in purported public interest questioning the constitutional validity of amendments to clauses 2 and 4 of DCR 33 (7) Appendix III dated 21 May, 2011. The petitioner has failed to make out any extra ordinary circumstance, sufficient for entertainment of the present petition as a public interest litigation. Rather, there are several reasons which prompt us to hold that there is no case made out to entertain the present petition as a public interest litigation.

18. Despite repeated queries, Mr. Harit, learned counsel for the petitioner was unable to state even the precise ground for challenge of the constitutionality of the impugned provisions. All that Mr. Harit contended was that the impugned

provisions are "contrary to public policy" or that there is a question of "discrimination on religious grounds", without elaborating on such aspects. Suffice to note that these are hardly the grounds and this is hardly the manner in which a serious challenge can be raised to statutory provisions and that too, by way of a public interest litigation. Rather, we are satisfied that it is in public interest that such petitions are nipped in the bud, lest, they preclude in future, some serious challenge to the statutory provisions in an appropriate matter and in a proper manner.

19. Since there was hardly any assistance from the learned counsel for the petitioner even in stating the ground of challenge to the constitutional validity of the statutory provisions, we perused the memo of the petition to examine whether any substantial grounds have been pleaded therein. Unfortunately, even the pleadings are vague and in-coherent. In paragraph 2 of the petition, the petitioner, in a convoluted manner has put forth some "contentions" and concluded by pleading that "the amendment has questionable motive and deserves to be examined, struck down/quashed." Attributing "motives" to the legislature or the rule making authority, is hardly some ground for striking down the statutory provisions. It is well settled that a legislative enactment or a statutory rule cannot be struck down by attributing "malice" or "motives" to the legislature or the rule making authority.

20. Similarly, under the caption "CONTENTION (B)", the petitioner alleges that the statutory provisions practise "discrimination on religious grounds (Violation of Article 14 & 15 of the Constitution)". Again, the contentions are vague and in-coherent. The learned counsel for the petitioner was unable to explain as to how the statutory provisions impugned, practise discrimination on religious grounds.

21. Finally, under captions of "CONTENTION (D) and CONTENTION (E)", the petitioner has alleged that builders and developers are engaged in "illegal profiteering" by taking advantage of amended clause 4 of DCR 33(7) Appendix III and this had led to "generation of black money". Again, apart from some convoluted arguments backed by no proper material, the petitioner cannot be permitted to question the constitutionality of statutory provisions in this manner. Besides, these contentions relate to mostly to some purported abuses in the matter of implementation of statutory provisions, rather than the constitutional validity of such provisions. The circumstance that a particular statutory provision is being observed in the breach or that the same is being abused, may be some cause for concern. However, the same is not a ground for striking down such provision as being ultra vires or unconstitutional.

22. On the basis of vague and coherent pleadings, it is not possible to entertain a public interest litigation in order to challenge statutory provisions. Similarly, on basis of reckless allegations backed by no evidence, it is not possible to determine the issues of nexus between authorities and builders or the issue of evasion of stamp duty and consequent generation of black money. The petition is bereft of proper pleadings. Neither the petitioner nor his Advocate have placed

on record any proper data. There is no proper legal research to back the challenges raised in the petition. All these are, reasons sufficient to decline the entertainment of the present petition as a public interest litigation. It is precisely for such reasons that the Supreme Court in the case of Guruvayoor Devaswom (supra) has cautioned against ordinarily entertaining public interest litigations to question the validity of a statute or a statutory rule.

23. Mr. Harit, learned counsel for the petitioner may also be not right in his submission that the amendments to clauses 2 and 4 of DCR 33(7) Appendix III dated 21 May 2011 were not at all considered by the Division Bench of this Court whilst deciding the case of M/s. J. Gala Builders (supra).

24. In M/s. J. Gala Builders (supra), the challenge was to clause 4 of Appendix III of DC R 33(7), particularly the words in bold :

"4. ?... the prescribed percentage of the surplus built up area as provided in the Table in the Third Schedule of the Maharashtra Housing and Area Development Act, 1976 shall be made available to the Mumbai Repairs and Reconstruction Board for accommodating the occupants in transit camps or cessed building which cannot be reconstructed, on payment of an amount as may be prescribed under MHADA Act, 1976."

25. The aforesaid statutory provisions were mainly challenged by builders/and property owners urging that the statutory provision provides for compulsory acquisition of property without authority of law and without providing adequate or reasonable compensation.

26. In considering the aforesaid challenge, the Division Bench of this Court did take cognizance of the statutory provisions contained in Appendix III to Regulation 33(7), which includes inter alia clauses 2 and 4 thereof. In paragraphs 6 and 7 of the Judgement and order dated 7 May, 2015, this Court made specific reference to the notification dated 21 May, 2011 amending Appendix III to DCR 33 (7), under section 37(2) of the MRTTP Act, 1966. Ultimately, following the decision of the Hon"ble Supreme Court in the case of Jayant Achyut Sathe (supra), the petition came to be dismissed. At paragraph 53 of the judgement and order dated 7 May, 2015, this Court held :

"53. We are also of the view that once the Supreme Court rendered the final Judgement dated 4 September, 2008 in Jayant Achyut Sathe v. Joseph Bain D"souza (supra) upholding the constitutional validity of DCR 33(7) with Appendix III, it is not open to this Court to entertain any contention challenging the constitutional validity of DCR 33(7) and Appendix III on any other ground."

27. In case of Jayant Achyut Sathe (supra), Hon"ble Supreme Court has already upheld the constitutional validity of DCR 33(7) and Appendix III thereto. A PIL was filed by Joseph Bain D"souza and others in this court making a grievance that gross misuse of amended DCR 33(7) when applied to private buildings. It was submitted that by taking shelter in the amended regulation 33(7), there was

misuse by pulling down buildings which are otherwise in good condition, merely because they were constructed prior to 1940. Number of tenants/occupiers was being inflated by creating tenancies to claim extra FSI and as a consequence there was going to be tremendous increase in the population in the island city of Mumbai, causing further constraints on its infrastructure. It was submitted that the extra FSI under amended DCR 33(7) was meant for the reconstruction of unsafe and dilapidated buildings only and not for all the 16,502 "A" Category cessed buildings. A declaration was therefore applied for to restrict amended DCR 33(7) only to those cessed buildings which were genuinely in a dilapidated unsound and unsafe condition.

28. The Supreme Court examined the entire historical background, including freezing of rents under the Bombay Rent Restriction Act, 1939 and subsequently Bombay Rent Act, 1947, levy of cess by the Bombay Buildings Repairs and Reconstruction Board and its replacement by the MHADA Act. The Supreme Court noted the findings in the Sukhtankar Committee Report submitted in July, 1997 that the life of most of the buildings in Category "A" (i.e. constructed prior to 1/1/1940) had nearly come to an end and that instead of repairing such buildings periodically, their reconstruction would be the only far sighted solution. It was felt that without giving incentive FSI, nothing could be achieved in respect of reconstruction and redevelopment of old buildings and, therefore, amendment under the MRTD Act was made on 25 January, 1999 to Regulation 33(7), whereby for reconstructing "A" category cessed buildings, FSI of 2.5 was granted on the gross plot area or the FSI required for rehabilitating the tenants plus 50% to 70% incentive FSI (as specified in Appendix III) whichever is more. The Supreme Court, finally, upheld the constitutional validity of DCR 33(7).

29. The aforesaid, is an additional reason not to entertain the present petition instituted in purported public interest to question the constitutional validity of amendments to clauses 2 and 4 of DCR 33(7) Appendix III dated 21 May, 2011. In fact, institution of the present petition despite pronouncements in the case of Jayant Achyut Sathe (supra) and M/s. J. Gala Builders (supra), constitutes abuse of the process of public interest litigations. Normally, once the constitutional validity of provision is upheld, the same issue cannot be revisited only by raising some additional contention or some additional ground. In the facts and circumstances of the present case, as noted earlier, neither have any valid grounds been pleaded nor was the learned counsel for the petitioner able to make any submissions on the issue of constitutional validity.

30. In *People's Union for Democratic Rights v. Union of India* (1982) 3 SCC 235, known as "Asiad Workers case", the Supreme Court defined public interest litigation to mean a cooperative or collaborative effort by the petitioner, the State or public authority and the judiciary to secure observance of constitutional or basic human rights, benefits and privileges upon the poor, downtrodden and vulnerable sections of the society. One of the most vital characteristic of public interest litigation is the liberalisation of the concept of "locus standi" in the

matters of access to judicial remedies. The genesis of such liberalisation was perhaps the realisation that the poor, oppressed marginalised and the voiceless are priced out of the judicial system and thereby, condemned to suffer transgressions upon their human and constitutional rights, for want of reasonable access to judicial remedies and justice. The public interest litigation is therefore the product of realisation of constitutional obligations of the judiciary. The public interest litigation is a upshot and product of the deep and intense urge to fulfil its bounden duty and constitutional obligation to afford access of justice to the sections of the society, which, on account of extreme poverty, ignorance, discrimination and illiteracy has been denied justice from time immemorial. Therefore, predominantly to provide access to justice to poor, deprived, vulnerable, discriminated and marginalised sections of the society. The concept of public interest litigations came to be evolved. Certainly, the petitioner in the present case cannot claim to represent the cause of the downtrodden, poor, marginalised or voiceless sections of the society. Rather, the petitioner, it appears is bent upon abusing such vital jurisdiction by masquerading as some public interest litigant.

31. In *Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India* (1981) 1 SCC 246, the Supreme Court held that our current processual jurisprudence is not of individualistic Anglo-Indian mould. Rather, it is broad based and people oriented and envisions access to justice through public interest litigations. Indeed little Indians in large numbers seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy.

32. The jurisdiction in matters of public interest litigation has been created and carved out by judicial creativity and craftsmanship. In *State of Uttaranchal v. Balwant Singh Chaufal & Ors.* (2010) 3 SCC 402, the Supreme Court has referred to evolution of public interest litigation in India. In the first phase, the public interest litigations mainly deal with protection of fundamental rights under Article 21 of the Constitution of India of marginalised groups and sections of society, who because of extreme poverty, illiteracy, ignorance, could not approach the judicial institutions. The second phase deals with cases relating to protection, preservation of ecology, environment, forests, marine life, wildlife, mountains, rivers, historical monuments etc. The third phase deals with directions issued by the court in maintaining the probity, transparency and integrity in governance. Upon detailed discussion, not only with regard to the evolution of public interest litigations and its various facets, the legal position in other judicial systems, namely, USA, UK, Australia and South Africa, the impact of public interest litigation on neighbouring countries like Pakistan, Sri Lanka, Nepal, the Supreme Court was constrained to advert to and deal with the unfortunate aspect of abuse of public interest litigation in India.

33. The Supreme Court in paragraphs 143 to 181 of its decision in the case of *State of Uttaranchal v. Balwant Singh Chaufal & Ors.* (supra) has discussed by

reference to various precedents, the unfortunate malaise involving abuse of public interest litigations by unscrupulous litigants and advocated the emergent need to stop such abuse, lest, such an important jurisdiction of public interest litigations which has been carefully carved out, created and nurtured with great care and caution by the court is blatantly abused.

34. In *Balco Employees' Union v. Union of India* (2002) 2 SCC 333, the Supreme Court, after taking cognizance of increasing instances of abuse of public interest litigation, the Court has devised number of strategies to ensure that the attractive brand name of public interest litigation is not allowed to be used for suspicious products of mischief. One of the devise was restricting locus standi in PILS to individuals "acting bona fide". The second was the imposition of "exemplary costs" as a deterrent against false and frivolous public interest litigations. Finally, the Supreme Court directed the High Courts to be more selective in entertaining public interest litigations.

35. In *S.P. Gupta v. Union of India* 1981 Supp. SCC 87, again, locus standi was conceded to individuals "acting bona fide" but not to "meddlesome interlopers" or to individuals bringing public interest litigation for personal gain. In *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.* (1990) 4 SCC 449, standing was denied upon hint of malice and oblique motives, on account of enmity between the parties. In *Neetu v. State of Punjab* (2007) 10 SCC 614, frivolous public interest litigations were dismissed with compensatory costs to ensure that the message goes in the right direction that petitions filed with oblique motive have no approval of the courts.

36. In *S.P. Anand v. H.D. Deve Gowda* (1996) 6 SCC 734, the Supreme Court warned that it is of utmost importance that those who invoke the jurisdiction of "seeking a waiver of the locus standi rules" must exercise restraint in moving the Court by not plunging in areas wherein they are not well-versed. In *Sanjeev Bhatnagar v. Union of India* (2005) 5 SCC 330, the Supreme Court imposed monetary penalty against the advocate for filing a frivolous and vexatious PIL, after it found that the petitioner was devoid of public interest but was in reality, "publicity interest litigation". In *Dattaraj Nathuji Thaware v. State of Maharashtra* (2005) 1 SCC 590, the Supreme Court affirmed the High Court's monetary penalty against a member of the Bar for filing a frivolous and vexatious PIL upon finding that the petition was nothing but a camouflage to foster personal dispute. The Supreme Court expressed anguish on the misuse of the forum of the court under the garb of public interest litigation by observing thus :

"public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. ? The court must not allow its process to be abused for oblique considerations?."

37. In *Holicow Pictures (P) Ltd. v. Prem Chandra Mishra* (2007) 14 SCC 281, the Supreme Court observed as under :

"10. ?? 12. It is depressing to note that on account of such trumped-up proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard ; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - Government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorised collection of tax amounts are locked up, detenu expecting their release from the detention orders, etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddling interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, break the queue muffing their faces by wearing the mask of public interest litigation and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.? "

[Emphasis supplied]

38. In case of *Holicow Pictures (P) Ltd.* (supra), the Supreme Court has further held that public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. Before entertaining a public interest litigation, the court has to be satisfied about (a) the credentials of the applicant ; (b) the prima facie correctness or nature of information given by him ; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. The court has to strike a balance between two conflicting interests ; (i) nobody should be allowed to indulge in wild and

reckless allegations besmirching the character of others ; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect.?

39. In case of *State of Uttaranchal v. Balwant Singh Chaufal & Ors.* (supra), a practicing advocate, by way of a public interest litigation, had questioned appointment of the Advocate General on grounds which were not only frivolous and vexatious but further, were concluded at least half a century ago by judicial pronouncements. In these circumstances, the Supreme Court observed that it was unfortunate that even after such a clear enunciation of the legal position, a large number of similar petitions were filed from time to time in various High Courts and the petitioner ought to have refrained from filing such a frivolous petition. "A degree of precision and purity in presentation is a sine qua non for a petition filed by a member of the Bar under the label of public interest litigation. It is expected from a member of the Bar to at least carry out the basic research whether the point raised by him is res integra or not. A lawyer who files such a petition cannot plead ignorance." In these circumstances, the Supreme Court held that such petition deserves to be discarded and discouraged so that no one in future attempts to file a frivolous petition. The petition was ultimately dismissed with costs of Rs. 1 lakh with directions to utilise the amount of costs for providing necessary help to deserving young lawyers in consultation with the President of the Bar. The Supreme Court directed that in case costs are not deposited within two months, the same would be recovered as arrears of land revenue. Finally, the Supreme Court, with a view to streamline the PIL issued the following directives :

"(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations."

[Emphasis supplied]

40. In *Ashok Kumar Pandey v. State of W.B.* (2004) 3 SCC 349, the Supreme Court, again, by reference to several earlier decisions held that the courts must do justice by promotion of good faith and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against social interest and public good. No litigant has right to unlimited drought of a court time and public money in order to get his affair settled in the matter as he wishes. Easy access to justice should not be misuse as a licence to file misconceived and frivolous petitions. People must not rush to courts to file cases in profusion under the attractive name of public interest. They must inspire confidence in courts and amongst the public. Time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that the courts are flooded with large number of so-called public interest litigations where in a minuscule percentage can legitimately be called as public interest litigation. The parameters of public interest litigation have been indicated in large number of cases, yet, unmindful to the real intentions, objectives, courts are entertaining such petitions and wasting valuable judicial time, which could be otherwise utilised for disposal of genuine cases. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs so that the message goes in the right direction that petitions filed with oblique motive do not have an approval of the courts.

41. Applying the aforesaid principles to the facts and circumstances of the present case, we dismiss this petition with costs. In fact, upon conclusion of the arguments, we had declared that we would be dismissing this petition with costs quantified at Rs. 10 lakhs. Mr. Harit, learned counsel for the petitioner however submitted that imposition of such heavy costs would be harsh in the facts and

circumstances of the present case and urged for reduction in the amount of costs. Although, there are no mitigating circumstances, we reduce the costs to Rs. 1 lakhs in the fond hope that the petitioner, either by himself or his associates does not indulge in the exercise of instituting frivolous petitions in the name of public interest. Besides, in the facts and circumstances of the present case, we are constrained to direct that the Registry shall not entertain any public interest litigation instituted by the present petitioner for a period of at least two years.

42. The petitioner is directed to deposit costs of Rs. 1 lakh in the Registry, within a period of four weeks from today. In case the costs are not deposited, liberty is granted to recover such costs as arrears of land revenue. The costs once deposited/recovered, shall be paid by the Registry to Tata Cancer Research Centre.

43. Rule is discharged with costs of Rs. 1 lakh as aforesaid.

44. All concerned to act on basis of authenticated copy of this order.